

April 5, 2010

The Honorable Nancy H. Sutley
Chairman, Council on Environmental Quality
Executive Office of the President
Washington, DC 20503

**Notice and Request for Comments on "Proposed National Objectives,
Principles and Standards for Water and Related Resources Implementation
Studies"**

Dear Chairman Sutley:

The American Association of State Highway and Transportation Officials (AASHTO) represent 52 departments of transportation (DOTs) from each of the United States, the District of Columbia and Puerto Rico. AASHTO is the leading voice for state DOTs on federal public policy issues concerning all aspects of transportation in addition to serving as the principal authority on international highway, bridge and safety engineering standards.

Background

AASHTO's members are concerned with the continued deterioration of our nation's transportation infrastructure assets due to increased volumes of passenger and freight traffic coupled with decades of financial neglect. As freight volume and congestion increases over time, AASHTO believes that the federal government must identify, define, plan and finance a multi-modal National Freight Transportation Network that maximizes the efficiency of all modes of transportation to ensure the movement of goods and people.

State DOTs are looking at developing alternative multi-modal resources as they struggle to build and maintain existing infrastructure capacity. Coastal and inland waterways are critically important in that they serve dual roles as the focal points for freight entering and exiting the national network, but also alternative modes for moving freight off of the national interstate highway system. Therefore, State DOTs rely heavily on the U.S. Army Corps of Engineers to successfully execute its navigation mission so that the coastal and inland waterways may efficiently and effectively continue to move freight.

State DOTs also play an active role throughout the Army Corps planning process for navigation projects, committing financial resources as local sponsors committed to ensuring the statutorily created principles and guidelines (PL 110-114, Sec. 2031 (b) (1)) are met to ensure navigation projects provide as much economic benefit with as little environmental distress as possible.

Overview of Public Comment

AASHTO submits these comments in response to the Council on Environmental Quality's (CEQ) "Proposed National Objectives, Principles and Standards for Water and Related Resources Implementation Studies" (NOPS).

Of foremost concern is that the CEQ P&S *far* exceeds that statutory authority granted by Section 2031 (2) of WRDA. Specifically:

- The National Objectives presented in the NOPS are inconsistent and go far beyond what is outlined by Congress.
- Congress directs the Secretary of the Army, not CEQ, to issue revisions to the Principles and Guidelines. CEQ and other federal agencies are to play a consultation role only.
- The NOPS establishes a new substantive standard (page 23) for decision-making that has no basis in law. Congress did not call for such a standard.
- The NOPS attempts to establish new legal requirements through guidance.

AASHTO believes that the CEQ should maintain the existing role of the Secretary of the Army as the final decision-making authority on the Army Corps planning process.

Additional Comments

As set forth in these comments, AASHTO has additional concerns with the NOPS, specifically that it also:

- I. Creates redundancy between the National Environmental Planning Act (NEPA) requirements already utilized in the Army Corps planning process and the proposed "Objectives, Principles and Standards" without delineating the relationship between the two.
- II. Dramatically expands the scope of Water and Related Resources Implementation Studies
- III. Fails to identify and address the role of Local Sponsors in future Studies

The NOPS creates redundancy in statutorily mandated National Environmental Planning Act (NEPA) requirements already utilized in the Army Corps planning process

The process outlined in the NOPS is duplicative of National Environmental Policy Act (NEPA) requirements and there is no indication that the results of the NOPS could be used to satisfy the requirements of NEPA. Additionally, there is no explanation of how the NOPS will interact with NEPA or how the two requirements would be reconciled. As such, this proposed process will result in redundancy and rework.

AASHTO recommends that CEQ clarify the relationship between the U.S. Army Corps of Engineers planning process and NEPA.

The NOPS dramatically expands the scope of Water and Related Resources Implementation Studies

The NOPS broadens the scope of a water resources study to watershed studies and requires that the responsible federal agency address a wide-range of water resource problems, "particularly those declared to be in the National interest by the Congress or the Executive Branch" without explanation as to how this determination is made.

The NOPS fails to provide a specific role for local sponsors in defining the scope of a project. Under the current Corps study process, planners are instructed to evaluate and display the effects of alternative plans. The recommended plan is the alternative that provides the greatest national economic benefit consistent with protecting the nation's environment. The NOPS

instead changes the evaluation of project effects and the decision criteria for selecting projects, appearing to favor environmental projects or a no action alternative over economic projects.

AASHTO recommends CEQ clarify how projects will be studied and evaluated in terms of economic and environmental benefit when selecting project alternatives.

The NOPS fails to identify and address the role of Local Sponsors in future Studies

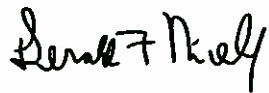
Section 221 of the 1970 Flood Control Act defines a local sponsor for an Army Corps of Engineers (Corps) water resources project as a non-federal interest that is "...a legally constituted public body with full authority and capability to perform the terms of its agreements and to pay damages, if necessary, in the event of failure to perform." Often, State DOTs agree to become a local sponsor with the understanding sponsors maintain "a key role in project planning and design, balanced by requirements for greater non-federal financial shares in the costs of studies and projects." However, the NOPS does not identify or define what, if any role a Local Sponsor has in regard to the outcome of final recommendations made in Army Corps feasibility studies.

AASHTO recommends providing a clearly defined role for the local sponsor in cost –sharing, establishing study objectives and determination of water resource issues deemed in the "national interest"

Final Recommendations

AASHTO believes that the CEQ should withdraw the present drafted Proposed National Objectives, Principles and Standards for Water and Related Resources Implementation Studies, and that the U.S. Army Corps of Engineers issue its Principles and Guidelines as directed by Congress in Section 2031 of WRDA.

Respectfully Submitted,



Gerald F. Nicely
Commissioner, Tennessee Department of Transportation
Chair, AASHTO Standing Committee on Water Transportation

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